IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Crl.Rev.Pet.No. 3784 of 2007()

CRMP.1252/2007 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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REVN. PETITIONER: REVISION PETITIONER/COMPLAINANT

ARUL V.NAIR, S/O.VASUDEVAN NAIR,
KIZHAKKEPPURATHU VEEDU, VAZHMUTTAM EAST,
VALLICODE VILLAGE, PATHANAMTHITTA DIST.

BY ADV. SRI.V.SETHUNATH

RESPONDENTS: STATE

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 22/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"**CR"**

V. RAMKUMAR, J.

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Crl.R.P. No. 3784 of 2007

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Dated: 22-10-2007

ORDER

The revision petitioner is the complainant in Crl.M.P. 1252 of 2007 filed under Sec. 190 Cr.P.C. with the following allegations:-

The complainant is the R.C. owner of a Tata Sumo bearing Reg. No. KL3P.7091. The accused agreed to give Rs. 20,000/- per month as monthly rent for using the vehicle and took the vehicle on hire from the complainant. The accused did not give the rent nor the vehicle back in spite of demand. The accused has thereby committed an offence punishable under Sec. 420 read with Sec. 106 I.P.C. The application may, therefore, be taken on file and forwarded to the police under Sec. 156 (3) Cr.P.C.

2. Along with the application, the complainant had also filed an application to issue a search warrant under Sec. 94 Cr.P.C.. The learned Magistrate issued a search warrant but the vehicle could not be traced out. After taking the sworn statement, the case was posted for enquiry under Sec. 202 Cr.P.C. In spite of posting the case for enquiry no witness was examined and the

Magistrate, could not, therefore, conduct any enquiry . The only material before the Magistrate was the sworn statement of the complainant which did not reveal any offence. Under these circumstances, the Magistrate dismissed the complaint. It is the said order which is assailed in this revision.

3. The learned counsel appearing for the revision petitioner made the following submissions in support of the revision:-

Annexure - I was not really a complaint but only a petition under Sec. 156 (3) Cr.P.C. requesting the Magistrate to forward the application to the police. The Magistrate was virtually converting the same into a complaint falling under Sec. 2 (d) Cr.P.C. which he was forbidden from doing in the light of the decision reported in ***II (2007) CCR 192 - Phool Singh v. State of U.P. and Others (Allahabad High Court) .*** Annexure I is at best a petition falling under Section 190 (1) (c) Cr.P.C .

4. I am afraid that I cannot agree with the above submissions. It was for want of any material in support of the complaint that the Magistrate dismissed the complaint. That will not preclude the complainant from filing another complaint. The argument that Annexure-A1 was really not a complaint filed with

a view to request the Magistrate to take action under the Code and falling under Sec. 2 (d) Cr.P.C. but only a petition under Sec. 156 (3) Cr.P.C. requesting to forward the matter to the police for investigation , is misconceived. In the first place, Sec. 156 (3) Cr.P.C. does not contemplate any application. Secondly, what the Magistrate can forward to the police under sub-section (3) of Sec. 156 read with sub-section (1) thereof is only a matter on which he is competent to take cognizance under Sec. 190 Cr.P.C. Even if what is filed before the Magistrate is a petition falling under Sec. 190 (1) (c) Cr.P.C. that again is an information on the basis of which the Magistrate is competent to take cognizance. It is only if the matter before the Magistrate answers the description under clauses (a) to (c) of Section 190 (1) Cr.P.C. can it be forwarded to the police under Sec. 156 (3) Cr.P.C. For that reason also it is doubtful whether a petition for merely forwarding the matter under Sec. 156(3) Cr.P.C. is maintainable. Whether or not the matter is to be forwarded to the Police under Section 156 (3) Cr.P.C. is something within the discretion of the Magistrate and the complainant cannot insist on forwarding the matter to the police. **(See Sreenivasan v. Nair - 2005 (2) KLT 396).** Since the impugned order of dismissal does not preclude the

revision petitioner from filing another complaint, the matter need not be delved deeper.

This revision is accordingly dismissed making the above position clear.

V. RAMKUMAR,
(JUDGE)

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